

RE: LPRSA - Trust Agreement 🗎

Sarah Flanagan to: Won, Emily L., karyllan.mack

Cc: "Hyatt, Jr., William"

From: Sarah Flanagan/R2/USEPA/US

To: "Won, Emily L." <emily.won@klgates.com>, karyllan.mack@klgates.com,

Cc: "Hyatt, Jr., William" <william.hyatt@klgates.com>

Emily,

I am not quite sure where I left things with Stephanie Roche (i.e., was she going to revise the trust agreement or was I) so I went ahead and made some suggested revisions that I hope will address US Bank's concerns and EPA's.

Also working on finding a sample claim certificate as per Karyllan's request. If I am not able to find an example quickly, I think I'll just suggest we work out a model since the trust agreement seems to lay out the central requirements.



0426 US_Bank_Trust_Agreement.DOC

Sarah P. Flanagan Office of Regional Counsel, NJ Superfund Branch USEPA, Region II 290 Broadway, 17th Floor New York, NY 10007 Tel: 212-637-3136

Fax: 212-637-3096

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"Won, Emily L." <emily.won@klgates.com>



"Won, Emily L." <emily.won@klgates.com> 04/23/2007 05:33 PM

To Sarah Flanagan/R2/USEPA/US@EPA

cc "Hyatt, Jr., William" <william.hyatt@klgates.com>

04/26/2007 05:23 PM

Subject RE: LPRSA - Trust Agreement

Hi Sarah,

Thanks for your response. We would work with US Bank to leave the language in Section 8 and Section 16 as you suggested. I will give you an update shortly.

Emily

Emily L. Won, Esq. K&L Gates One Newark Center, Tenth Floor Newark, NJ 07102-5252

Phone: (973) 848-4054 Fax (973) 848-4001

email: emily.won@klgates.com

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----Original Message----

From: Flanagan.Sarah@epamail.epa.gov
[mailto:Flanagan.Sarah@epamail.epa.gov]
Sent: Monday, April 23, 2007 5:22 PM

To: Won, Emily L. Cc: Hyatt, Jr., William

Subject: LPRSA - Trust Agreement

Emily,

The changes are mostly acceptable, but we are not so enthusiastic about the proposed changes to Section 8, which would make the charges for administration of the Trust Agreement payable from the Fund itself, and to Section 16, which would allow for the Fund to be used to indemnify the Trustee.

If the Trustee's administrative charges were to be paid from the Fund, EPA would most likely require the CPG to replenish the Fund in an equal amount, to prevent it from being unduly diminished by these charges. In any case, we would have to track the charges and make a determination about how to address them from time to time. This would add to EPA's administrative work, and of course we would have to charge the CPG for our time as part of our oversight. We would rather not have the additional burden of keeping track of payments made to the Trustee as opposed to for the RI/FS work, and I expect the CPG would rather not pay us to keep track of the charges and make occasional demands to the CPG to replenish the Fund. So, unless this change is important to the CPG, Section 8 should stay as it is.

Changing Section 16 is less bothersome, since its reasonably unlikely that the Trustee will need to be indemnified under this section, and if this were to happen it would presumably be a one time occurrence, and a simple matter to replenish the Fund. If you want to make this change, its ok, but you should be aware that if EPA were to become aware that application would be made for a payment from the Fund to indemnify the Trustee, we would request that the Fund be replenished in the same amount, under the authority of Paragraph 100 of the AOC.

Please let me know if you have any questions or want to discuss the proposed changes further.

Sarah P. Flanagan

Office of Regional Counsel, NJ Superfund Branch USEPA, Region II 290 Broadway, 17th Floor New York, NY 10007

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"Won, Emily L." <emily.won@klgat es.com>

04/19/2007 02:47 PM Sarah Flanagan/R2/USEPA/US@EPA

"Hyatt, Jr., William" <william.hyatt@klgates.com>

Subject

To

CC

FW: LPRSA - Trust Agreement

Hi Sarah,

As we discussed, here are some additional minor changes to the Trust Agreement. The Trust Agreement should appear with redlines. Once you have had a chance to review, please let me know if you approve these changes.

Thanks.

Emily L. Won, Esq.
K&L Gates
One Newark Center, Tenth Floor
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From: stephanie.roche@usbank.com [mailto:stephanie.roche@usbank.com]

Sent: Thursday, April 19, 2007 10:15 AM

To: Won, Emily L.

Cc: william.lynch@usbank.com

Subject: Re: LPRSA - Trust Agreement

Emily,

Per your request, for your review, attached is a Marked Version of the Trust Agreement with a few minor comments. The added language primarily was either 1) taken from the language in the USEPA Trust Agreement as provided in their Website or 2) serves to enhance the practical logistics upon establishment of the Trust.

Do not hesitate to contact me with any questions or concerns. I will be leaving the office at about 3pm today and will not be in the Office tomorrow, however I am available this morning and all next week.

I very much look forward to working with you on this project.

Stephanie Roche U.S. Bank National Association Corporate Trust Services 21 South Street Morristown, NJ 07960 tel: 973-898-7160

tel: 973-898-7160 fax: 973-682-4540

"Won, Emily L." <emily.won@klgates.com>

04/18/2007 03:58 PM

stephanie.roche@usbank.com

CC

To

william.lynch@usbank.com, "Mack,
Karyllan Dodson"

<karyllan.mack@klgates.com>

Subject

LPRSA - Trust Agreement

As we discussed, attached is the current version of the Trust Agreement. Please send me a redline with any additional changes US Bank would like to propose with a cover email explaining the reasoning behind the proposed revisions. It is always helpful to mention whenever you are adopting language that appears in EPA or NJDEP forms and prior agreements to persuade EPA to accept your proposed revisions. Once we agree with the proposed revisions, we will forward to EPA for their approval as well.

Thanks.

Emily

Emily L. Won, Esq.
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[attachment "NW-#153799-v3-US_Bank_Trust_Agreement.DOC" deleted by Stephanie Roche/NJ/USB]

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(See attached file: NW-#153799-v3-US Bank Trust Agreement.DOC)